

No. 14581

**In the United States Court of Appeals
for the Ninth Circuit**

**CLIFFORD G. MARTIN, d.b.a. MARTIN MUSIC CO.,
APPELLANT**

v.

UNITED STATES OF AMERICA, APPELLEE

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

BRIEF FOR APPELLEE

WARREN E. BURGER,
Assistant Attorney General.

C. E. LUCKEY,
United States Attorney.

**SAMUEL D. SLADE,
RICHARD M. MARKUS,**
*Attorneys,
Department of Justice.*

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BRIEF FOR APPELLEE

JURISDICTIONAL STATEMENT

This is an appeal from a judgment entered on August 10, 1954, by the District Court for the District of Oregon, awarding the United States the sum of \$12,978.10 (R. 35-36). The suit was brought by the Government on December 1, 1952 for a violation of Ceiling Price Regulation (CPR) 34, issued by the Office of Price Stabilization (OPS) pursuant to its authority under the Defense Production Act of 1950. The facts involved in the case were admitted (R. 23-26), and after deliberation on the issues of law the court entered judgment for the Government. Appellant's notice of appeal was filed on September 13, 1954. The jurisdiction of this court is invoked under 28 U.S.C. 1291.

STATEMENT OF THE CASE

Under authority granted by the Defense Production Act and delegated to OPS by the President, the OPS issued a General Ceiling Price Regulation (GCPR) fixing the overall pattern of price regulation. Thereafter, particularizing its requisites for differing types of industries, the OPS issued numerous ceiling price regulations included among which was CPR 34, the regulation for prices charged for services. Amendments to the regulations, including the decontrol of certain industries and occupations, were frequently effected by General Overriding Regulations. The Defense Production Act provides four distinct remedies for violation of price regulations issued under its authority, one of which is represented by this action—a suit by the Government for damages when no action has been brought by the private purchasers who sustained the overcharges.

The services for which the appellant has been found to have charged above his ceiling price were the maintenance, operation, and rental of coin-operated music machines, commonly known as juke boxes. The admitted facts, as set forth in the district court's pre-trial order (R. 23-26), show that appellant charged five cents per record between December 19, 1950 and January 25, 1951, the base period designated by CPR 34 for determining a ceiling price on services. However, between September 1, 1951 and May 5, 1952 appellant was charging ten cents per record, or three records for a quarter, at these same installations. As a result, during this latter period appellant's charges exceeded his five cent ceiling by \$25,956.20. It was also established that appellant's arrangements with location owners provided that he

pay 50% of the proceeds from a phonograph to the owner of the establishment in which that juke box was installed. Appellant maintained full control over the servicing of the machines and the collection of the charges.

Shortly after the complaint was filed, appellant moved to dismiss the suit (R. 10-20) on the ground that OPS regulations did not apply to the juke box industry and on other grounds unrelated to this appeal. In his answer (R. 21-22), appellant denied any violation of OPS ceiling price regulations and alleged that the Defense Production Act of 1950 did not authorize or empower OPS to regulate charges for appellant's business. At the pre-trial proceedings all issues of fact were resolved and the issues of law to be decided by the district Judge were narrowed to two: (1) Whether the juke box industry was subject to regulations under the Defense Production Act of 1950 as amended, and (2) whether CPR 34 established maximum lawful ceiling prices for that industry during the period of alleged violations.

In an oral opinion issued on June 30, 1954 (R. 29-30), the district court concluded that CPR 34 "was intended to and did regulate the maximum prices that may be charged by the operators of coin-operated music machines, and that such regulation is valid." The amount of overcharges was admitted to be \$25,956.20, and the Government had sought treble damages in its complaint pursuant to Section 409(c) of the Defense Production Act. The court determined, however, that "this is not a proper case for the imposition of treble damages," and awarded to the Government only 50% of the total overcharges (\$12,978.10), the amount that

appellant received from the operation of his machines after deducting the share paid to the owners of establishments where the juke boxes were installed.¹ The district court set forth its conclusions in greater detail in its finding of fact and conclusions of law (R. 30-35), and entered judgment for the Government on August 10, 1954 (R. 35-36).

QUESTIONS PRESENTED

1. Whether CPR 34, which controlled ceiling prices for services, properly applies to charges for the maintenance and operation of coin-operated music machines.

2. Whether portions of GOR 14, which exempted certain professional services from OPS regulation, removed the juke box industry from regulation during the period of the alleged overcharges here involved.

REGULATIONS INVOLVED

Pertinent parts of the General Ceiling Price Regulation (GCPR),² CPR 34,³ and General Overriding Regulation (GOR)^{14 4} are set forth in the appendix, *infra*, pp. 14-16.

SUMMARY OF ARGUMENT

Appellant's brief raises no objection to the validity of the OPS regulations involved but argues solely that

¹ There is some doubt as to the propriety of this ruling, in view of an official OPS interpretation which establishes that the person who controls the juke boxes and makes collections is the seller and is liable for the full amount of overcharges. But the Government does not raise that issue here.

² 16 Fed. Reg. 808, as amended, 32A C.F.R. 1451.

³ 16 Fed. Reg. 4446, as amended, 32A C.F.R. 732.

⁴ 16 Fed. Reg. 6664, as amended, 32A C.F.R. 1656.

these regulations did not establish ceiling prices for charges by coin-operated music machines. The identical issue is presented in the case of *Walt Schinkal v. United States* (now on appeal to this Court by the defendant juke box operator as No. 14313) and is considered in the Government's brief in that case at pp. 23-25. It is the Government's position in this case, as it was in the *Schinkal* case, that charges made by coin-operated music machines are prices for services controlled by CPR 34 and are not "prices or rentals for materials furnished for publication by any press association or feature service," so as to be excluded from regulation. The maintenance and operation of juke boxes are services as defined by CPR 34. And the clear intent of the "publication" exception was to avoid any interference with editorial expressions of thought or the freedom of the press. The fact that this exemption has no application to appellant's business is emphasized by an examination of the context from which the allegedly governing exemption is drawn and by the consistent interpretation of the administrative agency applying this regulation.

The inappropriateness of appellant's reliance upon GOR 14 as exempting the juke box industry from OPS regulation during the period of violations is considered in Point II, *infra*, pp. 12-13. The allegedly governing exceptions established by this regulation were intended to remove from coverage certain professional occupations, including professional entertainers and their managers. Neither the language of GOR 14 nor its rationale suggest that charges by coin-operated music machines would be exempt. This interpretation is fortified by reference to the administrative construction

of GOR 14, and by the fact that a special amendment to GOR 14 was later made, to exempt juke boxes from regulations, for a period after the time during which the overcharges here involved were made. With respect to both regulations the administrative interpretation can be determined by a consideration of other OPS regulations and official interpretations and by reference to two letters from the administrative agency set forth in the appendix, *infra*, pp. 17-24.

ARGUMENT

I

CPR 34 Did Apply to Charges Obtained by Coin-operated Music Machines

The OPS regulation which determines the ceiling prices for services, CPR 34, states that it "covers all services except" an enumerated few.⁵ "Services" are defined in Section 27 of CPR 34 [16 Fed. Reg. 4451, 32A C.F.R. 740]:

"Service" or "services" means any act or acts performed or rendered, otherwise than as an employee, for a fee, charge or other consideration. The term includes any privilege sold or granted, or any forbearance to act, for a fee, charge or other consideration. The term also includes the rental of any commodity or service if the rental charge is not covered by another ceiling price regulation and has not been exempted from price control.

The regulation was specifically applied, in official interpretations and releases, to charges for the use of frozen

⁵ CPR 34, Sec. 2 (a), 16 Fed. Reg. 4447, 32A C.F.R. 732, is set forth *infra*, p. 15.

food lockers,⁶ admission charges to professional baseball games,⁷ fees for children's summer camps,⁸ and charges by radio and television repairmen." At the time CPR 34 was issued, the Office of Price Stabilization suggested its scope of application in an official release [OPS Release 0-130, CCH, *Emergency Business Control Service*, Par. 70, 114]:

The Office of Price Stabilization today placed over \$10,000,000 worth of commercial and professional services furnished by more than a million establishments under a ceiling price regulation separate from the general price freeze of January 26.

The order also covers thousands of amusement and recreational facilities and industrial services with an unestimated volume of business

* * * *

Countless trade and personal services, as well as charges and fees encountered daily by the general public, are affected.

Some of the everyday matters concerned are:

* * * *

Bowling alleys, skating rinks, and golf fees
Admissions to amusement parks

⁶ CPR 34, Supplementary Reg. 6, 16 Fed. Reg. 11109, 32A C.F.R. 751.

⁷ CPR 34, Supplementary Reg. 11, 17 Fed. Reg. 820.

⁸ CPR 34, Supplementary Reg. 12, 17 Fed. Reg. 1184.

⁹ Price Order Questions and Answers-I, CCH, *Emergency Business Control Service*, Par. 70, 101.

A subsequent release restated the broad coverage of CPR 34 [OPS Release G-4, CCH, *Emergency Business Control Service*, Par. 70, 122]:

CPR 34 covers varied services. Included, for example, are:

(1) Repairs and rentals on such things as autos, radios, and household appliances.

* * * * *

(4) Miscellaneous services such as those offered by banks, parking lots, bowling alleys, golf courses, and banks renting safety deposit boxes.

It is also clear that the sale price of phonograph records was controlled.¹⁰ Finally, the application of CPR 34 to charges by coin-operated music machines is made even clearer by an official OPS interpretation which discusses who is liable for overcharges made for the use of juke boxes [CPR 34, Interp. 18, 85 Serv. 32: 200.3 (OPS Official Service)].

The facts disclose that X is the owner of automatic music machines, sometimes called juke boxes, which play a record or records when a coin is deposited in them; that he installs these machines, retaining title to them, in the business premises of cafe and tavern operators; that he makes periodic record substitutions, and repairs and services the machines; that he alone determines the price that will be required to operate the machines; that he takes possession of the coins deposited in the ma-

¹⁰ GCPR Supplementary Reg. 74, 16 Fed. Reg. 10782, 32A C.F.R. 1622 ("Ceiling Price Adjustment for Phonograph Records").

chines; and that the arrangement under which he installs the machines is that he will pay the premises operator a percentage, usually 50% of the coins deposited. The question has been raised as to whether on the basis of these facts the machine owner and the proprietor of the establishment may both properly be regarded as sellers of the music service to the public.

* * * * *

Under these circumstances, the machine owner, and not the proprietor of the establishment, is the seller of the music service to the public.

In spite of all these facts, appellant contends that the district court erred in concluding that CPR 34 regulated charges by coin-operated music machines. The theory of his claim is that juke boxes come within the list of excepted industries provided by CPR 34. Of the exceptions listed in the regulation the one relied upon by appellant is "services exempted in the GCPR, as amended." Appellant contends that the GCPR exempts juke box operators as "publishers". That exemption stated in its context, excludes the following charges from regulation: ¹¹

(c) Prices or rentals for:

(1) Materials furnished for publication by any press association or feature service;

(2) Books, magazines, motion pictures, periodicals, or newspapers, other than as waste or scrap;

¹¹ GCPR, Sec. 14, 16 Fed. Reg. 814, as amended, 32A C.F.R. 1460, is set forth *infra*, p. 14.

(d) Rates charged by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio broadcasting or television station, a motion picture or other theater enterprise, or outdoor advertising facilities.

On its face, an argument that coins inserted into juke boxes are "prices or rentals for materials furnished for publication" seems highly questionable. It is true, as appellant suggests, that the word "publication" can have many different meanings in different situations; it is even conceivable that, in some sense of the term, phonograph records publish melodies. But the interpretation of this regulation depends on the meaning reasonably inferable from its wording, its context, and its apparent purpose. A fair reading of it would seem to require that the word "publication" be considered to relate to the preparation and issuance of newspapers, periodicals, and books. That conclusion is strengthened by the fact that the materials for publication must be furnished by a "press association or feature service." Once again, it is possible to consider appellant's business, by some use of the phrase, as a "feature service," but when "feature service" is used in connection with "materials for publication" its meaning is limited by popular understanding to syndicates or associations of cartoonists, columnists, news reporters, and the like. Expanding this inspection one step further, it should be noted that this entire subsection deals with sources of information and editorial comment, as does the subsequent subsection. It would thus be difficult to accept appellant's position which apparently suggests that

the exemption applies to all public entertainment. As indicated above, pp. 7-8, numerous forms of public entertainment were regulated. Charges for rentals of radios, and the sale price of phonograph records were clearly controlled, which facts alone would seem to destroy appellant's claim that juke box operators were exempt.

Any doubt as to the import of this exemption can be disposed of by considering the contemporaneous administrative construction of the regulation, as summarized in letters received from the Chief of the Interpretations Division of OPS and the Assistant Director of the Office of Defense Mobilization (the successor agency to OPS), set forth *infra*, pp. 17-24. These letters make it perfectly clear that CPR 34 was considered to be applicable to the juke box industry by the OPS and that such an interpretation was consistently applied by the OPS. That administrative interpretation should therefore be accepted since it is neither plainly erroneous nor unreasonable. Cf. *Bowles v. Seminole Rock and Sand Co.*, 325 U.S. 410; *Porter v. Crawford and Dougherty Foundry Co.*, 154 F. 2d 431 (C.A. 9), certiorari denied, 329 U. S. 720.

Thus far, only two courts have considered the question whether CPR 34 applied to juke boxes; they were the court below and the District Court for the Southern District of California in *United States v. Walt Schinkal*, *supra*. Both district courts agreed that the regulation was applicable and that the exception for publications had no relevance to coin-operated music machines.

GOR 14 Did Not Exempt Charges by Coin-operated Music Machines from Ceiling Price Regulations During the Period for Which Damages Were Awarded by the District Court

Appellant argues that if CPR 34 did regulate juke box charges, that industry was decontrolled by GOR 14 before the alleged violations took place.¹² He relies upon the exemption of the following professions from ceiling price regulation allowed by Section 3 of GOR 14: Actors and actresses; artists; athletes; entertainers; musicians; program elements (packaged production) furnished by independent contractors (packaged producers) for use in radio or television broadcasting or in a motion picture, theater or night club; sports officials; managers of actors, actresses, and athletes. It is significant that no reference is made to coin-operated music machines in that list of exempted professions, and we submit that no such exemption is implied by the exclusion of any or all of those occupations. The intent of these portions of the regulation was to exempt certain recognized *professional* persons whose services are unique and whose charges often depend upon their personal reputations. Ignoring this purpose, appellant attempts to equate entertainers with the entire entertainment field. Not only is this substitution without basis in the language of the regulation, but it is clearly contradicted by the other regulations and interpretations, discussed *supra*, pp. 7-8, which specifically applied to entertainment services after the issuance of GOR 14. The fact that appellant's activities resulted in entertainment for the public does not

¹² Juke boxes were subsequently decontrolled by an amendment to GOR 14, as discussed *infra*, p. 13.

make him an entertainer for the purposes of GOR 14. If such were the case, operators of bowling alleys, restaurants, golf courses, and other amusement or recreational facilities would be exempted; yet the charges made by such persons were clearly covered by OPS regulations. Further, appellant's construction of GOR 14 differs from that which was understood and applied by OPS, as suggested by the letters reprinted in the appendix, *infra*, pp. 17-24. That administrative construction of GOR 14 is also emphasized by the fact that it was later considered appropriate to decontrol juke boxes and a special amendment to GOR 14 was made.¹³ The contention that juke boxes provide entertainment and are therefore not subject to OPS regulations was posited by the defendant juke box operator in the *Schinkal* case and was rejected by that district court just as it was by the court below.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

WARREN E. BURGER,
Assistant Attorney General,

C. E. LUCKEY,
United States Attorney,

SAMUEL D. SLADE,
RICHARD M. MARKUS,

Attorneys,
Department of Justice.

¹³ GOR 14, Amendment 27, 17 Fed. Reg. 10858 (effective December 1, 1952).

APPENDIX A

Section 14 of the General Ceiling Price Regulation provides in pertinent part as follows [16 Fed. Reg. 808, 32A C.F.R. 1451]:

Exemptions and exceptions. This regulation does not apply to the following:

* * * *

(c) Prices or rentals for:

(1) Materials furnished for publication by any press association or feature service;

(2) Books, magazines, motion pictures, periodicals, or newspapers, other than as waste or scrap;

(d) Rates charged by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting or television station, a motion picture or other theatre enterprise, or outdoor advertising facilities;

* * * *

Ceiling Price Regulation 34 provides in pertinent part as follows [16 Fed. Reg. 4446, as amended, 32A C.F.R. 732]:

Section 1. *What this regulation does.* This regulation removes most services from the coverage of the General Ceiling Price Regulation (GCPR) and brings them under this regulation. This regulation in general establishes the ceiling price of most services at the levels prevailing in the period December 19, 1950 to January 25, 1951, inclusive.

Section 2. Services covered. This regulation covers all services except:

(a) Services exempted in the GCPR, as amended;

* * * * *

Section 27. *Definitions and explanations.* (a) When used in this regulation:

* * * * *

(17) "Service" or "services" means any act or acts performed or rendered, otherwise than as an employee, for a fee, charge or other consideration. The term includes any privilege sold or granted, or any forbearance to act, for a fee, charge or other consideration. The term also includes the rental of any commodity or service if the rental charge is not covered by another ceiling price regulation and has not been exempted from price control.

* * * * *

Section 3 of General Overriding Regulation 14 provides in pertinent part as follows [16 Fed. Reg. 6664, as amended, 32A CFR 1656]:

Exceptions. (a) No ceiling price regulation now or hereafter issued by the Office of Price Stabilization shall apply to the rates, fees and charges for the supply of the services listed below and the services which fall within the scope of the occupations or categories listed below:

* * * * *

(2) Actors and actresses.

* * * * *

(5) Artists.

(6) Athletes.

* * * * *

(23) Entertainers.

* * * * *

(39) Musicians.

* * * * *

(51) Program elements (packaging^e productions) furnished by independent contractors (packaging^e producers) for use in radio or television broadcasting or in a motion picture, theater or night club.

* * * * *

(54) Sports officials.

* * * * *

(77) Managers of actors, actresses and athletes.

* * * * *

APPENDIX B

EXECUTIVE OFFICE OF THE PRESIDENT
Office of Defense Mobilization
Washington 25, D. C.

Office of the Director
Mr. Warren E. Burger
Assistant Attorney General
Department of Justice
Washington 25, D. C.

Re: Administrative Interpretation of CPR 34 and GOR
14 WEB:PAS:RMM—146-18-23-5

Dear Mr. Burger:

This is in response to your letter of March 10, 1955, requesting information with respect to the above, particularly as it relates to OPS ceiling prices for coin operated music machines.

The Director of Defense Mobilization has asked me to respond to your inquiry as this subject matter falls within my current responsibilities. Purely as a coincidence, I was Assistant Director for Price Operations during the life of the Office of Price Stabilization and in this capacity was conversant with the regulatory structure then applicable to coin operated music machines. In addition, I have examined the OPS files now on deposit at the Federal Records Center so that my answer to your questions would be precise.

There is no question that the charge of the aforementioned service was subject to price control from January 26, 1951, the effective date of the General Ceiling Price Regulation, to December 1, 1952, the effective date of Amendment 27 to General Overriding Regula-

tion 14. A copy of that Amendment and its statement of considerations is attached; you will observe that I signed the Amendment personally, in the capacity of Acting Director of Price Stabilization. These documents show on their face that coin operated music machines were subject to price controls until December 1, 1952.

Initially the controlling regulation was the General Ceiling Price Regulation until the issuance of a special regulation for services, designated Ceiling Price Regulation 34. The trade, both verbally and in writing, was repeatedly advised that CPR 34 controlled their operations. The files show, for example that on October 10, 1951, an OPS official so advised Mr. Harrison W. Call of 128 East 14th St., Oakland, California, in the latter's capacity as counsel for the California Music Guild. At no time did OPS ever rule or take a position that coin operated music machines fell within the statutory exemption of Section 402(e) (iii) of the Defense Production Act of 1950 for "materials furnished for publication by any press association or feature service, * * * or rates charged by any person in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting or television station, a motion-picture or other theatre enterprise * * *".

General Overriding Regulation 14 was a special regulation subsequently employed to identify those services for which ceilings were decontrolled or suspended. Until December 1, 1952, when this service was specifically exempted by Amendment 27, of GOR 14, it was the OPS position that they were under price control. This position was reaffirmed constantly by officials of the agency. The OPS files show that on August 23, 1951,

Mr. Harrison W. Call, of Oakland, California, filed a petition for price adjustment seeking decontrol on behalf of Music Operators of the America, Inc. A related petition was filed on September 21, 1951, by the California Music Guild. The files show and I recall that extensive consideration was given to these petitions, but that they were denied by Michael V. DiSalle, then Director of Price Stabilization, in a letter dated November 21, 1951, to the Music Operators of America, Inc.

Subsequently, on August 8, 1952, the same attorney filed a petition for decontrol on behalf of the California Music Guild, Inc. Similarly, on October 23, 1952, the Music Operators of America, Inc., by its own president filed an additional decontrol petition. The files show and I recall that there was disagreement among OPS officials as to whether this service should be decontrolled. Finally, by the attached Amendment 27 to GOR 14, effective December 1, 1952, this service was decontrolled as part of the Agency's plan to exempt controls on services as such controls became unnecessary because of changing economic conditions.

Finally, your letter inquires whether the Office of Defense Mobilization, as the successor agency to the Office of Price Stabilization, ever changed the aforementioned position. The brief answer to this is in the negative. The OPS went out of existence on June 30, 1953, and by force of law its parent agency, the Economic Stabilization Agency, was terminated on October 31, 1953. Pursuant to Executive Order 10494 of October 14, 1953, the Office of Defense Mobilization succeeded to most of the remaining price regulatory authority on November 1, 1953. You will understand that ESA and ODM would have little occasion to change

the OPS position with respect to a service decontrolled on December 1, 1952.

The major exception would be the granting of retro-active relief in the context of protest proceedings or direct complaint proceedings under Sections 407 or 408 of the Defense Production Act. However, I am advised by counsel that no protest involving this subject was filed during that period, and that the direct-complaint case instituted by Walt Schinkal was dismissed by the Emergency Court of Appeals on grounds making re-examination of the merits unnecessary. By this I do not mean to imply that ODM would reverse the OPS position; as a matter of fact your inquiry has led to an informal reconsideration of the matter. From this study it is perfectly clear that coin operated music machines were subject to price controls until December 1, 1952, the effective date of Amendment 27 to GOR 14, and no reason appears for the granting of further relief in the unlikely event that ODM is faced with this question on the merits.

I trust that this is responsive to your inquiry.

Sincerely yours,

EDWARD F. PHELPS, JR.,
Assistant Director for Stabilization.

ADDITIONAL EXCEPTED SERVICES

General Overriding Regulation 14 Amendment 27

TITLE 32A—NATIONAL DEFENSE, APPENDIX

CHAPTER III—OFFICE OF PRICE STABILIZATION ECONOMIC STABILIZATION AGENCY

[General Overriding Regulation 14, Amendment 27]

GOR 14—Excepted and Suspended Services Additional Excepted Services

Coin Operated Amusement Machines

Pursuant to the Defense Production Act of 1950, as amended, Executive Order 10161, and Economic Stabilization Agency General Order No. 2, this Amendment 27 to General Overriding Regulation 14 is hereby issued.

STATEMENT OF CONSIDERATIONS

This Amendment removes from price control fees and charges for operation of coin operated amusement machines such as juke boxes and other phonographs, skill games, strength-testing devices, and pinball machines.

This exemption applies only to machines operated for amusement purposes. It does not apply to charges for operation of machines which dispense any commodity, even though those machines may also be operated for amusement. For example, charges for operation of "claw machines" which may dispense articles of merchandise, are not covered. Moreover, charges for rental or maintenance of any coin operated machines are not included in this exemption action.

In the judgment of the Director, controls over the services exempted by this amendment are not required at this time in order to carry out the purposes of the Defense Production Act of 1950, as amended. Experience has shown that the administrative burden of retaining control over such service fees and charges is out of proportion to the benefits gained.

In the formulation of this amendment there was consultation with industry representatives, including trade association representatives to the extent practicable, and consideration has been given to their recommendations.

AMENDATORY PROVISIONS

General Overriding Regulation 14, as amended, is further amended by adding at the end of paragraph (a) of Section 3 a new subparagraph (114) as follows:

(114) Operation of coin operated amusement machines, including, but not limited to, phonographs, skill games, strength-testing devices and pinball games; provided, however, that this exemption shall not apply to the charges for operation of machines which dispense any commodity, whether or not such machines are also operated for amusement.

(Sec. 704, 64 Stat. 816, as amended, 50 U.S.C. App. Sup. 2154.)

Effective date. This Amendment to General Overriding Regulation 14 shall become effective December 1, 1952.

(S.) EDWARD F. PHELPS, JR.,
Acting Director of Price Stabilization.

DECEMBER 1, 1952.

March 14, 1955

Hon. Warren E. Burger
Assistant Attorney General
Department of Justice
Washington, D. C.

Attention: Paul A. Sweeney
Chief, Appellate Section

Dear Mr. Burger:

I have your letter of March 10, 1955 in connection with pending litigation against owners of coin operated music machines for alleged violation of OPS ceiling price regulations. You state that the defendants in these cases are contending on appeal that CPR 34, the OPS regulation dealing with services, did not apply to coin operated music machines, as the result of an exempting provision in Section 2 of that regulation. They also argue that, in any event, such services were exempt under GOR 14, under a provision exempting entertainers, managers of entertainers, etc.

I was Assistant Chief Counsel of the Office of Price Stabilization, in charge of the Interpretations Division, from the inception of controls in December, 1950 until the liquidation of the agency in 1953. In this capacity I had final responsibility for clearance and review of all interpretations issued under all OPS regulations. The Office of Price Stabilization consistently and at all times construed CPR 34 as covering coin operated music machines. Such charges were never regarded as exempt under any provisions of GOR 14 or any other reg-

ulation, until the juke box industry was specifically decontrolled on December 1, 1952.

Very truly yours,

(S.) JOSEPH ZWERDLING,
*Formerly Assistant Chief Counsel
and Chief of Interpretations Division,
Office of Price Stabilization.*